LOS ANGELES BAR BULLETIN

In This Issue

VOL. 24 AUGUST, 1949 NO. 12

Los Angeles
BAR BULLETIN

Official Monthly Publication of The Los Angeles Bar Association. Entered as second class matter October 15, 1943, at the Postoffice at Los Angeles, California, under Act of March 3, 1879. Subscription Price $1.00 a Year; 10c a Copy.

VOL. 24 AUGUST, 1949 No. 12

Charles E. Millikan

A Memorial

IN THE passing of Charles E. Millikan on June 28, 1949, the Bar of California has lost one of its most distinguished members, and the Los Angeles Bar Association its beloved President. He will long be remembered as a man who was friendly, generous, clear and definite in his demarcations between right and wrong, charitable and just in his attitude toward his fellows, honest, faithful to his ideals, bold and brilliant in his thinking, and possessed of a kindly sense of humor that was always a delight to those who knew him.

While the void will be difficult to fill, the influence of his personality and the example of his life as a lawyer, friend, husband and father will long continue. The finite mind cannot know why "Pat" should be taken in the full flush of his vigor and at the zenith of his professional career. But a spirit such as his cannot die. He still lives and will continue to live, and his influence for good will increase with the passing years.

The sympathy of the entire membership of Los Angeles Bar Association is extended to his widow and children in their bereavement, with the assurance that their loved one will long be remembered with respect and affection.

RESOLVED by the Board of Trustees of Los Angeles Bar Association in regular meeting assembled on the 12th day of July, 1949, that the foregoing be adopted as a Memorial to the late Charles E. Millikan, and that a copy thereof be forwarded to the bereaved family, and that it be published in the LOS ANGELES BAR BULLETIN.

A MESSAGE FROM THE NEW PRESIDENT, CLARENCE B. RUNKLE*

Clarence B. Runkle

THE Los Angeles Bar Association has suffered an irreplaceable loss. In a period of pressures,—economic, political and social,—energized by avidity both selfish and predatory, idealism is the great need. Pat Millikan was a tower of strength,—an exemplary husband and father, a ranking lawyer, an active churchman, a solid citizen. In a time when the popular fancy seems firmly in the grasp of apostles of change, he represented, he exemplified, he furnished stability. His was a leadership born of idealism.

His passing was the first death in office of a president of this Association. This presidency is indeed a worthy ambition for any lawyer. Honesty compels the admission that I anticipated it with pleasure and satisfaction. But in this unexpected and enforced accession, pleasure is displaced by sorrow; achievement is tempered by humility; satisfaction yields to a pervading sense of responsibility raised to abnormal heights by the exceptional standard set by this man cut down in his prime.

Pat's administration is now mine. My hopes for success and the Association's expectations of accomplishment are justified by the high caliber of incumbency in the other offices and on the Board of Trustees and in the numerous committees where the real spade-work is done. I have been heartened by numerous proffers of volunteered service. I think we have a good team. Let's do a good job. May we complete a year of acceptable service which shall stand as a fitting memorial to a great man.

---

*Clarence B. Runkle is the newly elected President of the Los Angeles Bar Association, having been elected by the Board of Trustees to fill the vacancy caused by the untimely passing of Charles E. Millikan. Before election to the presidency, he served as Senior Vice President of the Association, and was Acting President during the recent illness of President Millikan. President Runkle is a native Californian, having been born in Los Angeles on April 23, 1895; he attended the schools of the Los Angeles Public School System and graduated from Los Angeles High School in June, 1913, and from the College of Law, University of Southern California, in June, 1917, with a degree of LL.B.

He served with the United States Army in the first World War, entering active service in August, 1917, and was honorably discharged in February of 1919.

The new President has been an outstanding trial lawyer in this community; he has been associated with Joe Crider, Jr., in the practice of law since October, 1919. The present firm is Crider, Runkle & Tilson.

OPINION OF COMMITTEE ON UNLAWFUL PRACTICE OF LAW

APPLICATION FOR PERMIT PREPARED BY PUBLIC ACCOUNTANT

UNAUTHORIZED PRACTICE OF LAW: "Is it an unlawful practice of the law for a licensed public accountant, who is not a member of the Bar, on behalf of a corporation of which he is not an officer, director or shareholder, to prepare and file with the California Corporation Commissioner an application for a permit to issue the shares of stock of the said corporation?"

This question must be answered in the affirmative. In *State Bar of California v. Superior Court of Los Angeles*, 207 Cal. 323, 334 (1929), the supreme court upon review of a proceeding in mandamus to compel the Superior Court for Los Angeles to issue an order to one of its judges to be sworn and testify in regard to law practice by him in contravention of the State Bar Act, cited and adopted the definition of "practice of law" as found in the case of *Eley v. Miller*, 7 Ind. App. 529, 34 N. E. 836 (1893), as follows:

> "As the term is generally understood, the 'practice of law' is the doing or performing of services in a court of justice, in any matter pending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense, it includes legal advice and counsel, *and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may not be pending in court.*" (Italics supplied.)

This definition has been repeatedly used and relied upon by the courts of California in such cases as *Cohn v. Thompson*, 128 Cal. App. 783 (1932); *Bagg v. Wickizer*, 9 Cal. App. (2d) 753, 756 (1935); and *Gray v. Justices' Court*, 18 Cal. App. (2d) 420, 422 (1937).

Assuming that this is the definition of "practice of law," does it embrace the act of a certified public accountant who prepares and files for a fee an application for a permit to issue shares under the California Corporate Securities Act? The court in *People v. Merchants Protective Corporation*, 189 Cal. 531, 535 (1922), held that:

> ". . . counsel and advice, the drawing of agreements, the *organization of corporations and preparing*

> *papers connected therewith* (italics supplied), the drafting of legal documents of all kinds, including wills, are activities which have long been classed as law practice. The legislature is presumed to have used the words as persons generally would understand them, and not being technical or scientific terms, 'to practice as an attorney at law' means to do the work as a business which is commonly and usually done by lawyers in this county (citing numerous cases)."

This was cited with approval in *Smallberg v. The State Bar*, 212 Cal. 113, 119 (1931). *People v. Sipper*, 61 Cal. App. (2d) 844 (1943), involved an action against a real estate broker for practicing law without being a member of the Bar in violation of Business and Professions Code Section 6125. The court there held that the acts of the defendant in drawing up a trust deed and later a mortgage, and in giving legal advice in connection with the instruments, for a fee beyond the clerical charge for filling-in blank forms, were "practicing law" within the meaning of the above code section, and under the definition set forth in *State Bar of California v. Superior Court of Los Angeles, supra*. The court stated that to "practice law" did not imply a course of conduct but that a single act of giving legal advice for a fee would be sufficient. See *People v. Ring*, 26 Cal. App. (2d) 768, 773 (1937). From the foregoing it seems clear that the act under consideration here would be "practice of law," and unauthorized under Business and Professions Code Section 6125, providing, of course, that the application for a permit to issue shares of stock under the California Corporate Securities Act is a "legal document" or "corporate paper," or that its preparation and filing involves the giving of legal advice.

The Corporate Securities Act (Deering's General Laws, Act 3814) was intended by the legislature to regulate the issuance and sale of securities for the protection of the investing public. Section 3 *et seq.* of the Act requires that any company or individual desiring to issue securities must first apply to the Division of Corporations for a "permit" to issue securities. A permit is issued only after consideration by the Commissioner of all the information supplied by and in the application and after an investigation to ascertain the truth and accuracy of such information and the character and reputation of the applicant. The re-

(Continued on page 383)

PROBATE LAW AND PROCEDURE

SUMMARY OF COMMITTEE REPORT

THE Committee on Probate Law and Procedure that served during the year that ended in February submitted a report that deserves thoughtful consideration. The members of the committee were Stephen M. Farrand (chairman), Edward L. Butterworth, John S. Frazier, Arthur R. Kimbrough, Don A. Ladenberger (secretary), Otho G. Lord, John W. Luhring, Lawrence L. Otis, Donald R. Peck, Howard F. Shepherd (board member), Frank C. Sproul, and Thomas B. Williams.

EXTENSION OF TAX-DISCOUNT PERIOD

The committee recommended that Section 14161 of the Revenue and Taxation Code be amended to provide that a five per cent discount be allowed for payment of inheritance taxes within twelve months (instead of six months, as now provided) following the date of death.

INCREASE OF ARBITRARY LIMIT FOR DETERMINING NECESSITY OF INHERITANCE TAX HEARING

A complaint addressed to the Board of Trustees to the effect that procedure before the Inheritance Tax Department was very slow was considered, and as a result of the consideration the commiteee by resolution recomemnded that the Board of Trustees recommend to the State Controller that "the arbitrary limit placed at $100,000 which determines whether an inheritance tax hearing will be required be raised to $150,000." It was the opinion of the committee that the adoption of this recommendation "would have the effect of making more time available to inheritance tax attorneys on other matters, thus, it is hoped, permitting faster action in ordinary inheritance tax matters."

TRANSFER OF TRUST ASSETS TO DOMICILIARY TRUSTEE

The committee recommended that five new sections (to be numbered 1132 to 1136) be added to the Probate Code to provide a procedure for transferring trust assets to a domiciliary trustee. The report of the committee pointed out that these proposed new sections were intended primarily to cover a situation where there is in California an ancillary administration of a non-resident involving a small amount of property that is subject to the provisions of a trust created by the will admitted to probate in the domiciliary jurisdiction. Under the proposals

recommended by the committee, the California court would have discretion to order the assets to be transferred to the domiciliary trustee if, among other things, the domiciliary trustee had entered upon the administration of the same trust, the property in California was capable of transfer, and the transfer would facilitate the economical and convenient administratioh of the trust and promote the best interests of the persons interested in the trust.

The committee submitted as a part of its report the suggested wording of the proposed new sections.

BROADENING OF SCOPE OF SALE OF PROPERTY AS A UNIT

The committee recommended that Section 754.5 of the Probate Code, relating to the sale of property as a unit, be amended to permit the sale of real and personal property as a unit in cases where the personal property has not necessarily been used upon the real property. If the recommendation of the committee becomes effective, the section will read as follows:

> 754.5. *Sale of property as a unit.* When the executor or administrator determines in his discretion that by use or relationship any assets of the estate, whether real or personal, constitute a unit for purposes of sale, he may cause said property to be appraised as a unit; and whether or not it is appraised as a unit, he may sell all of said assets as a unit and under one bid, provided the court finds such a sale to be for the best interests of the estate; except that no private sale of such assets as a unit may be made for less than 90% of the sum of the appraised values of the personal property and the sum of the appraised values of the real property, appraised separately, or for less than 90% of the appraised value if appraised as a unit. If the assets to be sold as a unit include any real property, any such sale shall otherwise be made in the manner provided for the sale of real property, the bid and sale to be subject to the limitations and restrictions established for the sale of real property; otherwise it shall be sold in the manner provided for the sale of personal property.

ELIMINATION OF DESCRIPTION OF EXTRAORDINARY SERVICES

The committee recommended that Sections 902 and 910 of the Probate Code be amended because of the "feeling of this committee that the elaboration which the Code presently makes of what services are considered to be extraordinary should be

eliminated and that the use of the word 'extraordinary' should be avoided in describing fees. The proposed amendment would give the court a great deal more discretion in allowing compensation for services actually performed in the administration of an estate, regardless of whether they are considered ordinary or extraordinary under the distinction existing under the present code section."

MATTERS CONSIDERED BUT NOT FORMALLY ACTED UPON

The committee considered but took no formal action on the following:

1. The burdensome inconsistencies of the requirements of stock transfer agents.

2. A suggestion that the judges sitting in probate departments in the county meet with the committee to discuss mutual problems of judges and practitioners.

MATTERS RECOMMENDED FOR CONSIDERATION BY THE NEXT COMMITTEE

The committee recommended that the 1949 committee consider and take action on the following:

1. Amendment of Sections 360, 361, and 362 of the Probate Code "to permit the probate in California of notarial wills established or proved in accordance with the laws of the states and countries which permit them, and that other sections be amended to conform therewith. There appears to be no uniformity as to whether or not notarial wills are admitted to probate in California, and the present wording of those sections would not seem to permit them to be admitted to probate here." The committee included in its report the specific wording for the amendment of the sections.

2. Elimination of the requirement that notice of sale of real property be given. "Some of the members felt that in their experience the notice published in a legal newspaper did on occasion produce a buyer; others felt that it was of no use whatsoever in assisting the executor in getting a good buyer for the property, and that the thing that the purchasers in the market looking for good bargains at probate sale actually followed was the notice of the return on sales, whereupon they would go to the courthouse, examine the file, and, where they felt it proper or to their advantage, go into court and make a bid."

(Continued on page 381)

THE TRIAL OF JOHN PETER ZENGER

THE BEGINNINGS OF FREE SPEECH IN AMERICA AND ITS MEANING TODAY

By Leon R. Yankwich, J.D., LL.D.,
Judge, U. S. District Court

At the Editor's request, Judge Yankwich retells another famous trial—that of John Peter Zenger in colonial New York, which laid the foundation for the freedom of the press in the American colonies. Judge Yankwich is the author of Essays in the Law of Libel, published in 1929, and long out of print, and of many articles on the law of the newspaper, some of which have appeared in past issues of the Bulletin.

IN RECENT years, a small church in Mount Vernon, New York, has become a shrine for liberty-loving Americans. Rightly. For it was on the green of that church, then known as St. Paul's East Chester Church, that there was held on October 28, 1733, an election for the New York Assembly, which later led to the trial of John Peter Zenger, a German immigrant, in 1735, and in the ninth year of the reign of King George II, for a libel against the Government. This trial, with its defiance by Zenger, his counsel and the jury, who tried him, laid the foundation for free expression in America. (Reported in 18 Howell's State Trials, 1752, pp. 1202 *et seq.*) Gouverneur Morris, the Revolutionary leader, considered it the starting point of the American Revolution.

It is appropriate that this trial be made the subject of present-day discussion, because, the world over, we see the disappearance of freedom of expression. Totalitarianisms, whatever their form, in inception, survival or revival,—Fascism, Nazism, Falangism, or Communism,—were and are at one in denying this great constitutional fundamental. In our own country, persons who would deny vehemently that they adhere to the philosophies of any of these governmental systems, are advocating, under one guise or another, measures aimed at the curtailment of the right of freedom of expression. (See, Terminiello v. Chicago, decided by the Supreme Court on May 16, 1949.)

The authoritarian, whoever he is, bases his opposition to free expression upon the ground that it may endanger the safety of

the state. But our constitutional freedom in its very essence, implies, as Mr. Justice Holmes put it:

> "Not free thought for those who agree with us, but freedom for the thought that we hate." (United States v. Schwimmer, 1929, 279 U. S. 644, 654.)

Democratic government not only tolerates opposition, but protects it by constitutional guaranties. This it does because free government cannot exist without freedom of discussion. Criticism of one's cherished ideas is not pleasant. Freedom of expression may be abused. But without it, no freedom of any kind can exist. And if, to us Americans, freedom of expression is a great constitutional fundamental guaranteed by both Federal and State Constitutions, it is because men like Zenger, long before our independence had been purchased at the cost and with the blood of a Revolution and war, helped establish it.

Newer historians of the American Revolution have changed our conception of its nature. Instead of its being represented as a spontaneous movement, occasioned by the acts of an English sovereign (George III), it is now admitted to have been the culmination of strife and conflict which had been going on for many years, in almost every one of the colonies, between the people desirous of self-government and the sovereign across the sea and his representatives in the colonies who sought to deny it to them. Certain specific conflicts which preceded by many years the revolution,—which disclose this conflict,—thus assume added importance. Among them, the trial of John Peter Zenger, in 1735, for a libel against the government, has a special importance for those who are interested in the development of the law of libel and the struggle for freedom of expression in the English speaking world.

John Peter Zenger was a New York Printer, a German immigrant. The events which led to the establishment of his newspaper may be stated briefly. On October 28, 1733, an election was held on the green of the church at Mount Vernon, New York, which was known as St. Paul's East Chester Church. It resulted in the election of Lewis Morris to the New York Assembly. Morris had been a Justice of the Supreme Court and had been removed by William Cosby, colonial governor of the Province, because he had ruled against him in a suit. Morris ran for the Assembly in Westchester. His opponent was William Foster. Morris defeated him by a vote of 231 to 151. A Quaker

(Continued on page 371)

THE WORLD FEDERALIST AND THREE LAWS OF PEACE

*By Ralph G. Lindstrom.

Ralph G. Lindstrom

BY PRINTING *The Three Laws of Peace,* by Hon. William J. Palmer, the BULLETIN has opened its columns to the most important question before human beings today. Thoughtful people may not see eye-to-eye on *how,* but they cannot disagree on *whether,* to eliminate recurrent world war. Unless *homo sapiens* does this, he will be characterized by the first three letters of *sapiens.* He probably won't even be able to join the monsters of paleontology as skeletons in museums, for there probably won't be any museums.

But man *can* solve the question of war; and if he does he may go on to achieve what Lincoln called "man's vast future." The important thing is not that we all agree on the exact approach; but that we objectively discuss and analyze the problem, and seek a solution.

One does not lightly disagree with the views of one of the outstanding jurists of the land. In this instance, it is differing, too, with one deeply admired in sincere friendship. The "dissent" is primarily to the June installment of "The Three Laws of Peace."

"The Three Laws of Peace" are (1) defining the types of reprehensible behavior which are deemed instant offense against all members of society; (2) supplying courts of law for adjudication of controversies not peaceably settled between parties; and (3) enforcement power. Clearly these *are* the three essential bases for peace. The question is, how to effectively establish thse three bases or functions.

In part two (May BULLETIN), Judge Palmer highly extols the covenant of the League of Nations. That the League Cove-

---

*Ralph G. Lindstrom is a member of the Los Angeles, California, and American Bar Associations. He is a writer and lecturer on Abraham Lincoln; he is President of Lincoln Fellowship of Southern California and Trustee of The Abraham Lincoln Association of Springfield, Illinois. He is a member of te board ohf governors and a vice-president of Town Hall (Los Angeles). For many years e has given special study to the matter of world government as a basis for permanent peace. He is a member of the National Executive Council of United World Federalists, Inc.

nant far excelled the United Nations Charter also seems clear to the writer. (But we must not lose the United Nations. We should preserve it by giving it the power to do what we expect it to do.) Articles 10 to 15, inclusive, of the League Covenant constituted agreement (not government) between nations that "war or threat of war" is the kind of "reprehensible behavior" to avoid which such nations would submit controversies to arbitration or judicial settlement, or to the Council of the League of Nations. Condition or law or basis number one of "The Three Laws of Peace" is thus rather generally, but somewhat vaguely, established.

The second "law of peace" is the establishment of a court to which questions affecting the peace *must* be submitted. But who or what compels submission. Nations asserting uncontrolled "external sovereignty" agree to submit but with varying reservations as to what is domestic and what is international and within jurisdiction of arbitrators, court or Council. How effective would our local state and federal courts be if one on whom process is served might determine whether the court has jurisdiction?

The jurisdiction of a world court must be as clear as it is limited; but where it exists it is either compulsory or no more effective for world peace than ordinary diplomacy.

"External sovereignty" can exist only under law, definite, binding, and with compulsory rather than voluntary submission, or it is only diplomatic agreement which has always and will always result in war when national interests clash.

And what is the enforcement power of the third "law of peace" under the League Covenant? Judge Palmer quotes Article 16. In all fairness this article is only a treaty or diplomatic agreement. There is no enforcement power. Ethiopia and Manchuria showed the unworkability of a plan which relied on a national "undertaking" to cut off trade and intercourse with a covenant-breaking State, on the "duty" of nations to supply armed force to the League and on agreement of nations to support one another defensively. Look at it squarely and Article 16 was only a treaty between nations calling themselves a League.

ENFORCING LAW AGAINST A WHOLE NATION IS WAR

It may be necessary to have such a war, even under federal

(Continued on page 378)

Silver Memories

Compiled from the Daily Journal and Los Angeles Times of August, 1924.
By A. Stevens Halsted, Jr., Associate Editor

A. Stevens Halsted, Jr.

OF THE 175 applicants for admission to the California Bar who took the examination last June, 90 have successfully passed. Among the young lawyers who will be admitted to practice in September are the following: **Leo Aggeler, John M. Costello, Malcolm Davis, Wm. Sumner Holbrook, Jr., Harold W. Judson, Kurtz Kauffman, William C. Mathes, Charles L. Nichols, Ira C. Powers, B. J. Scheinman** and **Clyde C. Triplett.**

* * *

With none of the incumbent candidates opposed for the higher court places in the primary election this month, the retention of five of the most able jurists that have sat on the California bench for two decades or more is assured—Chief Justice **Myers**, Associate Justices **Shenk** and **Richards** of the Supreme Court, and Associate Justices of the Appellate Court **Curtis** and **Works.**

At the primary election this month, Los Angeles voters nominated candidates for the twelve full-term and two short term vacancies on the local Superior Court. Twenty-six candidates were in the field for the twelve full-time vacancies. Ten of the incumbents, Judges **York, Fleming, Keetch, Thompson, Valentine, Burks, Hardy, Collier, Shaw** and **Archbald** were in the first twelve with Justices **Frederickson** and **Haney** sharing that honor. For the short term on the Superior Bench, Judge **Harry Hollzer,** incumbent and guber-

(Continued on page 383)

Editor in charge of this issue—Rodney K. Potter.

INDEX TO VOLUME 24

SUBJECT INDEX

(References are to Pages in Volume 24)

TITLE INDEX TO ARTICLES

(References are to Pages in Volume 24)

AUTHOR'S INDEX TO ARTICLES

(References are to Pages in Volume 24)

THE TRIAL OF JOHN PETER ZENGER:

(Continued from page 361)

vote of 38 was also cast for Morris, but was counted out by the opposition upon the ground that the Quakers would not take the election oath in the form prescribed. Zenger reported the election for the New York Weekly Gazette, the only newspaper published at the time in New York. Because the article contained unfavorable references to Governor Cosby, the newspaper refused to publish the account. You see, there were what newspaper men call "sacred cows" even then. So Zenger shortly after the election began the publication of a weekly newspaper which he called the New York Weekly Journal, "containing the freshest advices, foreign and domestic." In it he began to publish articles in criticism of Cosby, his Council and the General Assembly, which were not pleasing to these authorities. The Chief Justice, James de Lancey, in January, 1734, in charging the Grand Jury, called their attention to the doctrine of libels. In October, 1734, he spoke again on the subject stating that "it is high time to put a stop to them." No indictment being returned, the matter was

brought before the New York General Assembly on October 17, 1734, in a message from the Governor's Council, which stated that Zenger's newspapers tended

> "to alienate the affections of the people of this province from his Majesty's Government, to raise seditions and tumults among the people of his province, and to fill their minds with a contempt of his Majesty's government."

On November 2, 1734, the Governor's Council ordered several issues of the newspaper to be burned by the common hangman near the pillory in the City of New York, and the Mayor and Magistrates of the City were ordered to be present at the burning. Finally, at the January 1735 term of the Supreme Court, Richard Bradley, Attorney General, filed an information against Zenger charging him with a libel upon the government. The publication of which the colonial government complained contained statements like the following:

> "They (the people of the City and Province of New York) think, as matters now stand, that their liberties and properties are precarious, and that slavery is like to be intailed on them and their posterity, if some past things be not amended; and this they collect from many past proceedings."

The general Assembly was charged with being "affected by the smiles or frowns of a governor." The Governor was charged with displacing Judges arbitrarily, erecting new courts which took away trial by jury "when a governor pleases."

Today statements of this character would pass unnoticed. But it is well to remember that in Zenger's day any publication reflecting upon the government or men in authority was punishable as a criminal and seditious libel.

Upon this information Zenger was arrested, imprisoned. He was arraigned on April 18, 1735. There is no need to discuss certain preliminary questions which Zenger's counsel raised, attacking the validity of the information and the right of James de Lancey, Chief Justice, to preside in the case. This observation should be made, however. We speak of the degradation of the judiciary in modern times. But can you think of a modern judge insisting on trying a man whose indictment he secured? The case came to trial before De Lancey and a jury, on August 4, 1735. Andrew G. Hamilton of Philadelphia had been brought in to defend Zenger. After the jury was sworn, Hamilton ad-

mitted the printing and publication. Whereupon the Attorney General rested his cases, stating in answer to a question by the court:

> "Indeed, Sir, as Mr. Hamilton has confessed the printing and publishing these libels, I think the Jury must find a verdict for the king; for supposing they are true, the law says that they are not the less libelous for that; nay indeed the law says, their being true is an aggravation of the crime."

Then began Hamilton's brilliant attempt to prove the truth of the publication. He pleaded eloquently. But he was overruled by the court. At the very beginning of the argument, De Lancey in a peremptory tone said:

> "You cannot be admitted, Mr. Hamilton, to give the truth of a libel in evidence. A libel is not to be justified; for it is nevertheless a libel that it is true."

When Hamilton expressed his regret that the court had so soon determined the case without giving him a chance to be heard, De Lancey said:

> "The law is clear that you cannot justify libel."

Hamilton's insistence that he be heard in an attempt to demonstrate to the court the viciousness of the Star-chamber decisions upon which the principle was based, got him nowhere, except that he received a warning which, in effect, threatened him with contempt for his insistence in arguing against the opinion of the court.

Defeated in his effort to prove the truth, Hamilton decided to stake his case upon a direct appeal to the jury, and to do so by defying De Lancey. So, while apparently submitting to De Lancey's final ruling, with a formal "I thank Your Honor," Hamilton without waiting for his turn to address the jury, turned to them and told them that they were the judges of the truth of the libel, and had the right to assume that he could have proved the truth "of what we have published." These were his first words:

> "I thank Your Honor. Then, Gentlemen of the Jury, it is to you we must now appeal, for witnesses to the truth of the facts we have offered, and are denied the liberty to prove."

These words and those which followed were, from a legal standpoint, a contemptuous appeal to the jury, *over the head of the judge*, bidding them defy the harshness of the law as laid down by the judge. His final words to the jury were an impassioned

plea for the right *to speak the truth in governmental matters,* with impunity. He concluded:

> "Men who injure and oppress the people under their administration, provoke them to cry out and complain; and then make that very complaint the foundation for new oppressions and prosecutions. I wish I could say there were no instances of this kind. But to conclude, the question before the Court, and you, gentlemen of the jury, is not of small nor private concern; it is not the cause of a poor printer, nor of New York alone, which you are now trying; No! It may, in its consequence, affect every freeman that lives under a British government on the main of America. It is the best cause; it is the cause of liberty; and I make no doubt but your upright conduct, this day will not only entitle you to the love and esteem of your fellow-citizens; but every man, who prefers freedom to a life of slavery, will bless and honour you, as men who have baffled the attempt of tyranny; and, by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, that to which nature and the laws of our country have given us a right—the liberty—both of exposing and opposing arbitrary power (in these parts of the world, at least) by speaking and writing truth."

As he concluded with these ringing words, the Attorney General protested that Hamilton had "gone very much out of the way." The Chief Justice took occasion to instruct the jury that Hamlton's statements *were not* the law.

The jury acquitted Zenger and thereupon, his own report of the case says:

> "There were three huzzas in the Hall, which was crowded with people."

The following day Zenger was discharged from his imprisonment. The people of the City of New York considered the acquittal a great victory in the cause of liberty. The common council of the City of New York, on September 29, 1735, presented Hamilton with the freedom of the City in a grant which recited the remarkable service done to the inhabitants of the colony "by his learned and generous defense of the rights of mankind and the liberty of the press."

The doctrine that truth was no defense to a criminal libel originated in the court of the Star Chamber. Defending the doctrine, William Hudson in his famous treatise on that Court says:

> "it hath ever been agreed, that it is not the matter but the manner which is punishable; for libelling against a common strumpet is as great an offense as against an honest woman, and perhaps more dangerous to the breach of the peace; for as the woman said she would never grieve to have been told of her red nose if she had not one indeed, neither is it a ground to examine the truth or falsehood of a libel." (Quoted in Yankwich, Essays in the Law of Libel, 1929, p. 112.)

Truth, with good motives and for justifiable ends is now a complete defense to a criminal libel. Peacetime sedition is, happily, unknown to use. And while a criminal libel may be committed by attacking an individual or a public official, libel upon a governmental body as such is not recognized. When the City of Chicago attempted to revive the doctrine of governmental libel by suing the Chicago Tribune for damages because of its attacks upon the Thompson regime, the Supreme Court of Illinois said that the action "was out of tune with the spirit and has no place in American jurisprudence." (Chicago v. Tribune Co., 1923, 307 Ill. 595.)

To Zenger and others like him who defied tyrnanny in the realm of expression at great sacrifice to themselves, we owe the right of free speech as it exists today. And because there are even amongst ourselves forces that would encourage the return to the Dark Ages when no one could think, speak or utter anything not pleasing to those in authority and who would place free America in a class with the totalitarian dictatorships, it is well to insist, as Bishop Francis J. McConnell of the Methodist Church, did some years ago, that it is our duty to create "a social atmosphere in which the man whom we call the prophet gets his chance to win a hearing." That some of the things said may not be worth hearing, that others may even shock our cherished ideals, are not excuses for curtailing the right of freedom of expression. Belief in freedom requires that we adopt toward such expressions the attitude of Voltaire towards the writings of a certain clergyman. Upon receiving the manuscript, he wrote:

> "I am certain, mon cher Abbé, that your book is full of idiocies, but I would give my last drop of blood to see it published. For it is necessary that the most diverse opinions be heard."

"For my part," said Goldsmith, while he was discussing with Dr. Johnson whether Martinelli should continue his History of England to their time, "I'd tell the truth and shame the devil."

And the doctor replied, "Yes, sir; but the devil will be angry. I wish to shame the devil as much as you do, but I should choose to be out of the reach of his claws."

To which Goldsmith's rejoinder was:

"His claws can do you no harm when you have the shield of truth." (Boswell's Life of Johnson, Everyman's Ed., Vol. 1, p. 460.)

We should trust, as did the founders of our nation, the power of truth to overcome error, or what we consider, heterodox doctrine. To resort to force to achieve this result is—to use a famous teacher's statement—to "snatch from truth its only means of victory." (R. M. McIver, The Modern State, p. 153.)

Now, as in Dr. Johnson's time, truth is our best shield.

THE WORLD FEDERALIST AND THREE LAWS OF PEACE *(Continued from page 363)*

world government. But if world law, in a limited area, could have been enforced against Hitler, Mussolini, Tojo and their co-conspirators before they wrecked the world, instead of *ex post facto* law and enforcement, it would have been effective. If the gang constituting the Kremlin Politburo could be confronted by world law applicable to them as they blow out the light of self-chosen government in one satellite after another, we would not be talking in terms of World War III as another "preventive war."

The officials at the Kremlin bitterly and officially oppose United World Federalists. But Russia belonged to the League and the United Nations. Why? Because they feel perfectly safe under such a league plan and because they feel assured no world enforcement power will be set in motion in time of stress and, even if it were, that it would be ineffective.

Now to re-state some of the propositions of the June installment as a United World Federalist sees them. We agree, the three laws of peace must be recognized and enforced. "Knowing and dealing with nations and people as they actually are"; we feel that we cannot rely on competitively extravagant professions and protestations of national righteousness made by *delegates to League-type organizations, representing current national governmental administrations.* We know from bitter experience that national governments and their United Nations

delegates do not (and scarcely can) further peace as against national interest, even on the short range. To expect them to is nothing short of visionary. Let them speak and expect them only to further national interest without endangering the peace of the world and as representatives of the people of their countries, and they—the same men—will be freer to further the ultimate interest of their own people by preserving the peace of the world.

If California and Arizona were not under and part of a federal plan; if those who represent us at Washington were delegates only of current state administrations and not bound by federal law based on peoples of the two states, does anyone question that we would be shooting at, instead of arguing with, each other—and probably destroying Boulder Dam in the bargain? This is no reflection on the Governments of either state. It is analysis of a system which produces dire consequences. When we speak and think, not as people but as group thundering at group and rejecting others solely because they are members of another group, we certainly bring out the worst, not the best, in the human being.

We are told we must have "foundations of good will, intelligence, honesty, understanding and trust" before we can end war and have "the kind of government that the World Federalist proposes." The latter answers that in spite of the conspicuous lack of all these qualities in America today in the backwash of two world wars, we are getting along with each other (even in the California-Arizona water controversy, which we are told affects the very continued existence of one of the two sections) without wholesale shooting, and only because we have a federation of peoples and not a mere "league of friendship" or confederation between states. It's like Clark Eichelberger saying we must have a world community before we can have the federal world government which he admits must come. The answer is that what we have in the United States by way of community is the *result*, not the *cause*, of our federal "we the people of the United States" plan.

Agreed that government ought be promoted "only to the extent necessary for our common protection and advancement." Agreed, too, that not only our national government, but all others (and we add: including those never under the federal

plan), have encroached upon state or provincial jurisdiction (or had jurisdiction surrendered by the states in the delusion of getting something for nothing). What is a prime factor in this trend? If we continue the trend toward garrison police states in the hope of security from war and for lack of enforceable world law in the very limited area of war prevention, the whole world will be regimented under national governments until there is either oblivion for *homo sapiens* or one world government by tyrannical conquest. And we cannot unilaterally disarm or be unprepared.

Conversely, establish a limited and as-universal-as-possible federal world government to adjudicate and enforce law to assure peace, and the nations will have far less excuse for centralization of power at the national level. In the delusion of "external sovereignty" without an area of enforceable law, and in the social and economic upheavals following world wars, both communism and centralizing power find their greatest opportunity. Preserve nations and states and counties and cities with full sovereign power in their internal affairs, and save them from the delusive impulse to "throw their weight around" in the anarchy of externally asserted sovereignty, and man's opportunity to be an individual and develop in the freedom of individual enterprise may again be given him.

Neither nationalism nor national patriotism should be condemned, and they are not condemned by world federalists. We would preserve them both and the nations and cultures which give rise to them. They are lost when they are *extended into external affairs* in a claim of sovereignty not under law. This is the anarchy which destroys them. Which state or state culture or government has been lost by or under our federal plan?

Contrariwise this Coast might have been under Russia, or Spain, or Mexico but for that plan.

One must fully agree that "Glory to God in the highest" can best be expressed by men who understand also that "Blessed are the peacemakers, for they shall be called the children of God." Equally we must agree that the human "critter" is so much in need of law to discipline him for his own preservation and for the protection of others when he engages in "reprehensible behavior" that we should engage in the prayer of sincere desire to establish a definitely limited area of world law to restrain and punish the greatest of human crimes—aggressive war. Eliminate aggressive war and its companion, defensive war, will also go.

But to do this we must cease sending men as delegates from current national administration to represent narrow national short-range interest; even when they know it may spell bankruptcy, financial, social and civil on the long range.

Because we are not dreamers in transcendental idealism, United World Federalists believe that to bring out what Lincoln called "the better angel of his nature" man must, individually be made subject to law in a limited area for world affairs. Then the Kaisers, the Hitlers, the Mussolinis, the Tojos and the Stalins of the future may one day be taken out of circulation before they develop the psychoses in their own people with which to wreck the civilization and social and financial structures of their day.

Such a move will not bring the millennium. It will give opportunity in centuries of laborious effort to achieve what Lincoln calls "man's vast future." The alternative to eliminating war is eliminating man, or at least his hard-won civilization .

RALPH G. LINDSTROM.

PROBATE LAW AND PROCEDURE

(Continued from page 359)

3. "The compilation of Senator Roseberry of a number of changes in the Probate Code to bring about 'streamlining' of probate procedure. . . ."

4. The advisability of amending the Probate Code to provide for a theory of guardianship wherein the person acting would be "conservator," and the avoidance of the word "incompetent" whenever possible.

5. The revision of the sections of the Probate Code relating to the appointment of successor trustees.

ACTION BY THE BOARD OF TRUSTEES

The Board of Trustees, at a meeting held March 8, 1949, (1) approved the recommendation of the committee with respect to inheritance tax hearings; (2) directed that the recommendations of the committee with respect to transfer of trust assets, sale of real and personal property as a unit, and fees for extraordinary services be forwarded without recommendation to the Association's delegation to the State Bar conference; and (3) referred to the 1949 committee the matters which had been recommended for its consideration.—E. W. T.

OPINION OF COMMITTEE ON UNLAWFUL PRACTICE

(Continued from page 356)

quirements of the application and its contents, as set forth in Section 3 of the Act, clearly involve matters of such legal significance, both from the standpoint of the Commissioner, and consequently of the public at large, and of the applicant, as to logically preclude the preparation and filing of an application without competent legal advice. Moreover, under the provisions of Section 16 of the Act, a defective application or one not in conformity with the true intent of the applicant may prove to be financially disastrous to him. For these reasons, the application must be considered a "legal document" and its preparations and filing to involve the giving of "legal advice."

On September 10, 1944, the National Conference of Lawyers and Certified Public Accountants, representatives of the American Bar Association and the American Institute of Accountants, adopted a resolution, published in 32 A. B. A. J. 5, at page 8, (January, 1946), paragraph 3 of which said:

> "3. That certified public accountants should not prepare legal documents, such as articles of incorporation, corporate by-laws, contracts, deeds, trust agreements, wills, and similar documents. Where in connection with such documents, questions of accountancy are involved or may result, it is advisable that certified public accountants be consulted."

Thus the accountants themselves have recognized that the preparation of legal documents and corporate papers is within the province of the attorney and not the accountant, and the act by the accountant referred to in the principle question must be considered an unauthorized practice of law if recognition is to be given the basic policy as laid down in *In re Galusha*, 184 Cal. 697, 698 (1921), wherein the court said:

> "The adequate protection of public interests, as well as inherent and insuperable pecularities pertaining to the practice of law, require a more detailed supervision by the state over the conduct of this profession than in the case of almost any other profession or business."

SILVER MEMORIES

(Continued from page 364)

natorial ad interim appointee, and **C. W. Pendleton** are nominated. District Attorney **Asa Keyes** defeated Judge **Caryl M. Sheldon** by about two to one.

Judge **Leslie R. Hewitt** of the local Superior Court and former member of the State Senate and City Attorney from 1906 to 1911 has resigned from the bench. He will resume private law practice in association with **Guy R. Crump.** Judge **Hewitt** was appointed to the bench 11 years ago by Lieut. Governer **Wallace.** He succeeded Judge **Conrey,** who was elevated to the District Court of Appeal.

* * *

The California Bar Association's annual convention will be held at Catalina in September. Secretary of the Navy **Curtis D. Wilbur,** former Chief Justice of the California Supreme Court, will be the guest of honor. Hon. F. Dumont Smith of Kansas, a prominent member of the American Bar Association, will deliver the annual address of the convention on "The Story of the Constitution." Assistant Attorney-General **Mabel Walker Willebrandt** will talk on "California Women and the Law."

* * *

Frederick C. Valentine, attorney and chancellor of the Episcopal Church in Southern California, has been appointed by Governor **Richardson** to succeed Judge **Leslie R. Hewitt.** Attorney Valentine was a law partner of the late **Henry T. Lee** and has specialized in ecclesiastical and probate law in recent years.

* * *

Judge **Arthur Keech's** probationary method, whereby probationers are required to start a bank account with a certain proportion of their wages, has attracted nationwide attention.

* * *

Some 900 property owners in San Francisco who suffered losses in the 1906 fire for which German and Austrian insurance companies refused to recognize claims will now be reimbursed to the full amount of their policies, with 5% interest. Payment will be made out of assets of the foreign companies seized by our government when this country entered the war. The claims amount to more than five million dollars.

* * *

The appraised value of livestock destroyed in the State to date in the campaign to control the foot and mouth disease totals over four milion dollars. The heaviest los has been in Los Angeles County where livestock valued at $1,600,000 was destroyed.